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CAREY, RODRIGUEZ, GREENBERG & PAUL, LLP STEVEN M. GREENBERG 950 PENINSULA CORPORATE CIRCLE SUITE 2022 BOCA RATON, FL 33487			DICKERSON, TIPHANY B	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/789,331

Filing Date: February 27, 2004

Appellant: LEVINE, BRIAN

Steven Greenberg
Reg. No. 44,725
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/27/2010 appealing from the Office action mailed May 25, 2010.

(1) REAL PARTY IN INTEREST

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) RELATED APPEALS AND INTERFERENCES

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

The following is a list of claims that are rejected and pending in the application: 1-13.

(4) STATUS OF AMENDMENTS AFTER FINAL

The examiner has no comment on the appellant's statement of amendments after final rejection contained in the brief.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

The examiner has no comment on the summary of the claimed subject matter contained in the brief.

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

7) CLAIMS APPENDIX

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) EVIDENCE RELIED UPON

- U.S. 7,440,961 Matousek et al. 02/2004
- U.S. 2003/0061433 Hall et al. 09/2001
- Dawson et al., "RFC 2445: Internet Calendaring and Scheduling Core Object Specification (iCalendar)", Nov. 1998, from
http://delivery.acm.org/10.1145/rfc_fulltext/RFC2445/rfc2445.txt?key1=RFC2445&key2=6089654721&coll=GUIDE&dl=GUIDE&CFID=89289591&CFTOKEN=81188603

(9) GROUNDS OF REJECTION

The following ground of rejection is applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-7 and 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matousek (US 7,440,961) in view of Hall et al., US 2003/00614333.

Concerning claims 1 and 9, Matousek discloses a method for applying ordered modifications to recurring event instances, the method comprising the steps of:

identifying an event exception in a calendaring system executing in memory by a processor of a computer, the event exception corresponding to a separately defined and separately stored recurring event instance in the calendaring system (Matousek, col. 7, lines 25-43, i.e., identifying the correct instance of a recurrence event and its instance

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identifier associated with the appropriate exception). Examiner clarifies that that the term "separately stored" is construed broadly since being stored separately may be applied in a very broad way such as data being stored in different types of files or systems, devices, databases, or as narrowly as data being contained in separate tables or cells.

Matousek fails to disclose modifying at least one property of said recurring event instance based upon said separately stored event exception. However, *Hall*, [37], discloses wherein the expander is used to modify records.

It would have been obvious to one of ordinary skill in the art at the time of the invention to implement the method of modifying at least one property of said recurring event instance, as taught by Hall, into the system of Matousek. Under *KSR International Co.*, "...any need or problem known in the field of endeavor at the time of the invention and addressed by the patent [or application at issue] can provide a reason for combining the elements in the manner claimed." *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, ___, 82 USPQ2d 1385, 1397 (2007). Thus a reference in a field different from that of applicant's endeavor may be reasonably pertinent if it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his or her invention as a whole. At the time of the subject invention, there existed a known problem in the art of modifying recurring event instances while also minimizing space and keeping accurate track of scheduling data (as discussed Matousek's Background of the Invention. The invention of Hall is directed to solving the same type of problem.

Concerning claims 2 and 10, *Matousek in view of Hall* discloses the method of claim 1, further comprising the steps of:

further identifying additional event exceptions corresponding to said recurring event instance (*Hall*, [38], wherein the retractor identifies exceptions in discrete records to create a general exception) and,

for each one of said further identified additional event exceptions, further modifying at least one property of said recurring event instance based upon said one of said further identified additional event exceptions (*Hall*, [38], wherein the identified exception adhere to prescribed modifications, e.g., retractor generates exceptions revealing the modification in time on the first Monday).

Concerning claims 3 and 11, *Matousek in view of Hall* discloses the method of claim 1, further comprising the step of repeating said identifying and modifying steps for additional ones of the recurring event instances (*Hall*, ¶ 0037, via expander and sync engine).

Concerning claims 4 and 12, *Matousek in view of Hall* discloses the method of claim 1, further comprising the steps of: further identifying event exceptions relating to said recurring event instance which have become stale (*Hall*, ¶ 0052, i.e., deleting records if the status is new or unchanged, and the later record has been changed by an exception).

Concerning claims 5 and 13, *Matousek in view of Hall* discloses the method of claim 4, wherein said further identifying step comprises the step of further identifying event exceptions whose specified modifications to event properties in said recurring event instance have been obviated by modifications specified in subsequently defined event exceptions (*Hall*, ¶¶ 0038 and 0052).

Concerning claim 6 and 7, *Matousek in view of Hall* discloses a calendaring system comprising:

a computer with processor and memory (*Hall*, [29]);

a recurrence event expander disposed within a calendaring system (*Matousek*,

Fig. 2, Ele. 208) executing in the memory by the processor of the computer, the expander being programmed to expand recurrence events into event instances based upon the properties specified within the recurrence events; and, (*Hall*, Fig. 8, Ele. 70); and,

a recurrence event modifier also disposed within the calendaring system and

coupled to said recurrence event expander, the modifier modifying properties within the event instances based upon event exceptions defined for respective ones of the event instances and separately stored from the event instances. (*Hall*, Fig. 2, Ele. 24 connected to Ele. 20).

Concerning claim 7, *Matousek in view of Hall* discloses the system of claim 6, further comprising a modification rule reducer coupled to the recurrence event modifier,

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the modification rule reducer inspecting older ones of the event exceptions to detect stale event exceptions (*Hall*, [52], describing deleting old records).

4. **Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over Matousek in view of *Hall* and further in view of AAPA.

In the response dated 05/04/2009, the applicant failed to timely traverse the officially noticed fact that at the time of the invention, iCalendar was a standard file format for calendar data exchange. (See Dawson et al., RFC 2445, Internet Calendaring and Scheduling Core Object Specification (iCalendar), Nov. 1998, from http://delivery.acm.org/10.1145/rfc_fulltext/RFC2445/rfc2445.txt?key1=RFC2445&key2=6089654721&coll=GUIDE&dl=GUIDE&CFID=89289591&CFTOKEN=81188603.

Therefore, the officially noticed fact is hereby regarded as applicant's admitted prior art. One of ordinary skill in the art at would have found it obvious to implement a well known format such as iCalendar file formats in order to gain the commonly understood benefits of using widely compatible file types.. Prior art is not limited just to the references being applied, but includes the understanding of one of ordinary skill in the art. MPEP 2141(III). Therefore the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

(10) RESPONSE TO ARGUMENT

Appellant's remarks made in the Appeal Brief filed 27 December 2010 (hereinafter, "Brief") have been fully considered but are not persuasive.

First, the Appellant expressed concern regarding which specific KSR rationale category was used in the finding of obviousness in claims 1 and 9. (Brief at 7.) Examiner submits that a reasoned explanation was presented in the rejection that sufficiently established a *prima facie* case of obviousness. Further, according to the 2010 KSR Guidelines, "Although the 2007 KSR Guidelines presented the rationales as discrete, self-contained lines of reasoning, and they may indeed be employed that way, it is useful to recognize that real-world situations may require analyses that may not be so readily pigeon-holed into distinct categories." *Examination Guidelines Update: Developments in the Obviousness Inquiry After KSR v. Teleflex*, 75 Fed. Reg. 53,643, 53,646 (Sept. 1, 2010). In view of this line of reasoning, a specific rationale is not required.

Second, the Appellant argues that the cited prior art fails to teach "event exceptions" as claimed in each of the independent claims. (Brief at 9.) The examiner disagrees. As noted by the Appellant, in the instant application, an event exception refers to modified properties of an event instance. *Id.* According to the Appellant, the exception in Matousek "...refers to an event instance that differs from the occurrence that would normally be created by the recurrence pattern." *Id.* at 9-10. The examiner finds that the event exception described in Matousek is comparable to the event exception claimed. In Matousek, the event exception differs from the occurrence only because one or more of its properties has been modified. For this reason, the exception of Matousek meets the claim.

Finally, the Appellant asserts that the exceptions in Hall are not exceptions for event instances. *Id.* at 10. Examiner notes however, that Hall was cited as *teaching* the modifying limitation.

(11) RELATED PROCEEDINGS APPENDIX

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Tiphany B. Dickerson/
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/Beth V. Boswell/
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